
(2005) 09 DEL CK 0145

In the Delhi High Court

Case No : Criminal Rev.P. No. 647 of 2004 and Criminal M.A. 1721 of 2004

Smt. Mamta Sahu

APPELLANT

Vs

The State (NCT of Delhi)

RESPONDENT

Date of Decision : 16-09-2005

Acts Referred:

Evidence Act, 1872 — Section 113, 113A

Penal Code, 1860 (IPC) — Section 107, 302, 304, 304A, 306

Citation : (2005) 124 DLT 300

Hon'ble Judges : Manju Goel, J

Bench : Single Bench

Advocate : Roshan Saini, for the Appellant; O.P. Saxena, for the Respondent

Final Decision : Allowed

Judgement

Manju Goel, J.—The present revision petition is directed against the order dated 12th October, 2004 whereby the petitioner-Mamta Sahu has been charged of abetting suicide by her husband-Mahender Sahu. The impugned order is brief. By way of ground for framing charge, the Additional Sessions Judge has merely stated in the order that from the statement of Kapil Sahu(son of the accused) and Seema, there is a prima facie material u/s 306 of the Indian Penal Code(for short `IPC`) against the accused. It is submitted before this Court by the learned counsel for the revision petitioner that two statements of Kapil Sahu and Seema do not indicate any offence of abetment to suicide punishable u/s 306 of the IPC.

2. Mahender Sahu(hereinafter referred to as `the deceased`) was admitted to Tirath Ram Shah Hospital on 10th July, 2002 at 1.30 AM. He had been brought there by his wife and brother. The MLC shows that the deceased had consumed malathion 50% EC half-an-hour before he was brought to the hospital. After a prolonged illness, the deceased died on 9th March, 2003. The FIR which was originally registered u/s 309 of the IPC was, thereafter, converted to Section 306 of the IPC. The statement of Kapil Sahu was recorded on 17th April, 2003. A copy of the translation of the statement of Kapil Sahu has been placed on record.

I, however, prefer to read the original statement recorded in Hindi available in the trial court record. As per this statement, the deceased and the revision petitioner/accused had a fight on the evening preceding the incident at around 8.30 PM. The cause of the quarrel was that the brother of the revision petitioner, about two months before, had stated that he was not bothered as to whether Kapil or his father was dead. The deceased asked the accused again and again as to whether her brother had said such a thing and the accused again and again denied the same. The witness Kapil Sahu goes on to say that on getting angry the deceased asked the accused to recover Rs.8 lacs from her brother as he wanted to purchase another house. Such money had been given by the deceased to the brother of the accused. The witness says that thereafter the mother/accused became angry and said that she would go back home. When the accused started leaving their house, the deceased wanted to restrain the accused from leaving the house on which there was a scuffle. The deceased, however, succeeded in preventing the accused from leaving the house. He had made the accused sit in a room and bolted the room from outside and even got the main gate locked. Later, however, the room was opened. The son Kapil Sahu was asked to go back to sleep as he was to attend school next morning. Kapil Sahu says that his parents thereafter also went to bed at around 1.00 a.m. Kapil Sahu says, he got up on hearing some noise and found that the deceased was vomiting in the varandah while the accused was standing. The accused told him that the deceased had consumed something. He went to the deceased and asked him but the deceased denied having taken anything.

3. The statement, thereafter, goes on to say how the brother of the deceased was called and how they brought the deceased to the hospital.

4. So far as the statement of witness Seema is concerned, that does not relate to the quarrel between the deceased and the accused or about the cause of consumption of poison. The statement of Seema is merely to the effect that against the doctor's advice, the accused had given the deceased a bottle of Limca to drink. There is, however, no evidence that the due to Limca any harm was caused to the deceased nor is the case registered u/s 302, 304 or 304A of the IPC. The question for determination is only whether a charge u/s 306 of the IPC is made out. For this purpose, the only incriminating evidence relied upon by the prosecution is statement of Kapil Sahu.

5. Section 306 of the IPC can be extracted below to see the real nature of the offence.:

"Abetment of suicide.- If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

What is abetment is defined in Section 107 of the IPC which is as under:

"Abetment of a thing.- A person abets the doing of a thing, who -

First.- Instigates any person to do that thing; or

Secondly.- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing;

or

Thirdly.- Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1,- A person who by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2.- Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act."

6. When Section 107 of the IPC is read carefully, it is clear that for Constituting abetment, the accused should either instigate any person to do the thing or engages with one or more other person or persons in any conspiracy for the doing of that thing or intentionally aid by any act or omission the doing of that thing. There are two Explanations to this Section. A person who by willful misrepresentation, or by willful concealment of a material fact can be said to have instigated the thing which is done on account of such concealment or misrepresentation. Explanation 2 prescribes that an abetment can be done either prior to or at the time of the commission of that act. In the present case, there is nothing to suggest that the accused had instigated or aided the deceased in commission of suicide. Nor is there any evidence to show that she had engaged with some other person or persons for doing any act. There is no evidence that any concealment or misrepresentation on her part had led the deceased to commit suicide. There is no evidence that she in any way did anything to facilitate the commission of suicide by the deceased.

7. In addition to the provisions of Section 107 and Section 306 of the IPC, Section 113A of the Evidence Act deals with abetment to suicide. Section 113A deals with the suicide of a married woman and in case such a woman had been harassed by her husband or any member of his family, they can be deemed to have abetted the suicide of the married woman. The provisions of Section 113 has no relevance to the facts of the present case.

8. For the purpose of charging the revision petitioner/accused the prosecution has to have sufficient material to show that the accused had in one way or the other abetted the suicide of the deceased. In the present case, there was a fight between the deceased and the accused and it can be said that it was a deceased who won in the fight as he could prevent the accused from leaving the house and the accused accepted her defeat by giving up her effort for leaving the house and having gone to bed with the deceased. About two hours after this the deceased

was found vomiting. There is no evidence with the prosecution to show that anything had happened in these two hours which caused the consumption of poison or which can show any abetment by the accused to the consumption of poison by the deceased. Simply because the consumption of poison was preceded by a fight between accused and the deceased, it cannot be said that the suicide had been instigated or abetted by the deceased. The Supreme Court in the case of Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh, had gone to the extent of saying that the accused who in a fit of anger and in the course of a quarrel told the deceased "go and die" could not be said to have instigated the suicide that followed the quarrel.

9. In view of the above, the revision petition succeeds. The impugned order is set aside and the accused/revision petitioner is discharged.

10. Before parting with the case, it is necessary to advise the learned trial court that although a detailed order is not required to be recorded for the purpose of framing a charge, such order must show application of mind. The trial court may not weigh the evidentiary value of the evidence procured by the investigation. Nor is the trial court required to discuss the entire evidence relied upon by the prosecution. Nonetheless, the trial court must understand that passing an order on charge is a serious matter and, Therefore, the order must show that the Court had applied its mind and that some material of some kind or the other was available for framing charge. Every effort should be made to weed out such cases which lack the basic ingredients of the offence so that the Court is left to handle only those matters which require trial.